



DEPARTMENT OF TRANSPORTATION

4910-EX-P

Federal Motor Carrier Safety Administration

[Docket No FMCSA-2011-0097]

Pilot Program on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audit (PASA) for Sergio Tristan Maldonado doing business as Tristan Transfer (Tristan) with U.S. Department of Transportation (USDOT) number 2348928, which applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007" and all subsequent appropriations.

DATES: Comments must be received on or before [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.].

- **ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA-2011-0097 by any one of the following methods:
 - Federal eRulemaking Portal: To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number "FMCSA-2011-0097" and click the search button. When the new screen appears, click on the

blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

- Fax: 1- 202-493-2251.
- Mail: Docket Management Facility, (M-30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room 12-140, Washington, DC 20590-0001.
- Hand Delivery: Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. All submissions must include the Agency name and docket number for this notice. See the “Public Participation” heading below for instructions on retrieving comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to <http://www.regulations.gov>. Please see the “Privacy Act” heading below.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time and in the search box insert the docket number “FMCSA-2011-0097” and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to this notice. You may

also go to Room W12-140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Public Participation: The <http://www.regulations.gov> website is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> website. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf>.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001. Telephone (512) 916-5440 Ext. 228; e-mail marcelo.perez@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110-28, 121 Stat. 112, 183, May 25, 2007). Section 6901 of the Act

requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the Federal Register [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, Federal Register notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the Federal Register, and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on November 20, 2012. FMCSA announces that the Mexico-

domiciled motor carrier in Table 1 successfully completed the PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 all titled (“Successful Pre-Authorization Safety Audit (PASA) Information”) set out additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. Row Number in the Appendix for the Specific Carrier: The row number for each line in the tables.

B. Name of Carrier: The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. U.S. DOT Number: The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier’s power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix “X” to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. FMCSA Register Number: The number assigned to the Mexico-domiciled motor carrier’s operating authority as found in the FMCSA Register.

E. PASA Initiated: The date the PASA was initiated.

F. PASA Completed: The date the PASA was completed.

G. PASA Results: The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist

designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. FMCSA Register: The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

- a. Current registration number (e.g., MX# - not yet assigned);
- b. Date the notice was published in the FMCSA Register;
- c. The applicant's name and address; and
- d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and Insurance public website at <http://li-public.fmcsa.dot.gov/>, and selecting FMCSA Register in the drop down menu.

I. U.S. Drivers: The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. U.S. Vehicles: The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. Passed Verification of 5 Elements (Yes/No): A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

- a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.
- b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;
- c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;
- d. Verify records of periodic vehicle inspections; and
- e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. If No, Which Element Failed: If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item K above, FMCSA will gather information by reviewing a motor carrier's compliance with "acute and critical" regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials

Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR Part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called "factors." The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. Passed Phase 1, Factor 1: A "yes" in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations--General).

N. Passed Phase 1, Factor 2: A "yes" in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. Passed Phase 1, Factor 3: A "yes" in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. Passed Phase 1, Factor 4: A “yes” in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. Passed Phase 1, Factor 5: A “yes” in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; Driving and Parking Rules).

R. Passed Phase 1, Factor 6: A “yes” in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable “accident” is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. Number U.S. Vehicles Inspected: The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal, if

the inspection is passed successfully. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection at the time of the PASA decal as a result of a passed inspection.

T. Number U.S. Vehicles Issued CVSA Decal: The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. Controlled Substances Collection: Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. “US” means the controlled substance and alcohol collection facility is based in the United States.

b. “MX” means the controlled substance and alcohol collection facility is based in Mexico.

c. “Non-CDL” means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver’s license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. Name of Controlled Substances and Alcohol Collection Facility: Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier that has completed the PASA.

Table 1

Row number in Tables 2, 3 and 4
of the Appendix to today's notice

Name of carrier

USDOT No.

Sergio Tristan Maldonado dba
Tristan Transfer

2348928

Table 2: Successful Pre-Authorization Safety Audit (PASA) Information (see also Tables 3 and 4)									
Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column D - FMCSA Register Number	Column E - PASA Initiated	Column F - PASA Completed	Column G - PASA Results	Column H - FMCSA Register	Column I - US Drivers	Column J - US Vehicles
1	Sergio Tristan Maldonado dba Tristan Transfer	2348928	MX-None	11/13/2012	11/20/2012	Pass	6/17/2013	2	1

Table 3: Successful Pre-Authorization Safety Audit (PASA) Information (see also Tables 2 and 4)									
Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column D - FMCSA Register Number	Column K - Passed Verification of 5 Elements (Yes/No)	Column L - If No, Which Element Failed	Column M - Passed Phase 1 Factor 1	Column N - Passed Phase 1 Factor 2	Column O - Passed Phase 1 Factor 3	Column P - Passed Phase 1 Factor 4
1	Sergio Tristan Maldonado dba Tristan Transfer	2348928	MX-None	Yes	None	Pass	Pass	Pass	Pass

Table 4: Successful Pre-Authorization Safety Audit (PASA) Information (see also Tables 2 and 3)									
Column A - Row Number	Column B - Name of Carrier	Column C - US DOT Number	Column D - FMCSA Register Number	Column Q - Passed Phase I Factor 5	Column R - Passed Phase I Factor 6	Column S - Number US Vehicles Inspected	Column T - Number US Vehicles Issued CVSA Decal	Column U - Controlled Substance Collection	Column V - Name of Controlled Substance and Alcohol Collection Facility
1	Sergio Tristan Maldonado dba Tristan Transfer	2348928	MX-None	N/A	Pass	3	3	MX	Laredo Urgent Care

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at <http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx>. For carriers that participated in the Agency's demonstration project that ended in 2009, copies of the previous PASA and compliance review, if conducted, are also posted. All documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, is also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced website.

The Agency acknowledges that through the PASA process it was determined that Sergio Tristan Maldonado had an affiliation not identified in the original application. It was noted during the Agency's vetting and documented as an attachment to the PASA. Sergio Tristan Maldonado submitted for the record a letter explaining the relationship with a Mexico-domiciled motor carrier, Maria Higinia Tristan Maldonado dba Trujillo's Transfer (USDOT #1771021). Maria Higinia Tristan Maldonado is the sister of Sergio Tristan Maldonado. She currently employs him as a manager and operates the vehicle and employs the two drivers that Sergio Tristan Maldonado plans to use in the Pilot Program. During its vetting of the application and the PASA, FMCSA confirmed that Sergio Tristan Maldonado did not establish or use the affiliated company to evade FMCSA

regulation in continuing motor carrier operations, or fail to disclose the affiliation for the purpose of avoiding or hiding previous non-compliance or safety problems.

FMCSA reviewed the inspection records of the affiliated carrier, Maria Higinia Tristan Maldonado dba Trujillo's Transfer, an OP-2 carrier. This affiliated company has Safety Measurement System (SMS) scores that exceed the Behavioral Analysis and Safety Improvement Categories (BASICS) thresholds in two areas: Driver Fitness and Vehicle Maintenance. The Agency will be monitoring the safety of the affiliated carrier through SMS and will take action directly on the carriers, if appropriate.

Researching further, FMCSA reviewed a relationship that Maria Higinia Tristan Maldonado dba Trujillo's Transfer has with a Mexico-domiciled motor carrier, Maria Dolores Rosas Velazquez dba Transportes Cel; USDOT #2161024, because Trujillo's Transfer vehicles (including the vehicle Tristan Transfer plans to use in the Pilot Program) were used by Transportes Cel in the past. According to a statement provided by the Pilot Program applicant Sergio Tristan Maldonado, Transportes Cel operated these vehicles for a period of time under an agreement made between Trujillo's Transfer and Transportes Cel. Sergio Tristan Maldonado has no affiliation with Transportes Cel.

Two of the three vehicles submitted for planned operation in the Pilot Program, a 1995 U.S. manufactured Volvo, and a 1996 U.S. manufactured International, were deemed ineligible for participation as not able to meet EPA vehicle emissions standards required for the Pilot Program.

The two approved drivers passed the English language proficiency evaluation during the PASA.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the ADDRESSES section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of publication of notice in the FMCSA Register.

Issued on: June 18, 2013

Anne S. Ferro
Administrator

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